

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Germain Difo	Team: Team # 1	CCRB Case #: 200504985	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/04/2005 10:50 PM	Location of Incident: the corner of Rivington Street and Allen Street	Precinct: 07	18 Mo. SOL 11/4/2006	EO SOL 11/4/2006	
Date/Time CV Reported Thu, 05/05/2005 2:36 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/09/2005 1:46 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Benjamin Cui	26367	932505	007 PCT
2. POM Steven Hong	30781	932800	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Steven Hong	Force: PO Steven Hong used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Benjamin Cui	Force: PO Benjamin Cui used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

## Synopsis

This complaint was made to Internal Affairs on May 5, 2005, and was received at the CCRB on May 9, 2005. On May 4, 2005 at approximately 10:50 PM, § 87(2)(b) arrived at the corner of Rivington and Allen Streets in Manhattan with his friend, § 87(2)(b) who had driven him to the location to pick up his bicycle. Shortly after arriving at the location, § 87(2)(b) exited § 87(2)(b) vehicle and urinated in the street. When § 87(2)(b) moved to the sidewalk and began to unlock his bicycle, which he had chained to a signpost earlier that day, someone grabbed § 87(2)(b) from behind, prompting him to turn around in an attempt to defend himself. The individual, who § 87(2)(b) recognized from his uniform as a police officer, grabbed the chain from § 87(2)(b) hand as another officer punched him once in the right temple, causing him to immediately lose consciousness. Though he was unsure as to what else transpired at the location, § 87(2)(b) alleged that the officers who grabbed his chain and punched him, later identified as PO Steven Hong and PO Benajamin Cui respectively, used further force against him. (Allegations A and B)

§ 87(2)(g)

## Summary of Complaint

### FDNY Ambulance Call Report #§ 87(2)(b)

The narrative for § 87(2)(b) ambulance call report states that § 87(2)(b) was found in a holding cell at the 7<sup>th</sup> Precinct at 10:55 PM on May 4, 2005. § 87(2)(b) who was alert and oriented, complained of pain to both wrists and had an abrasion on his left cheek. Both of his wrists were swollen and red from where he had been handcuffed. § 87(2)(b) who had alcohol on his breath, stated that he had been drinking a little that day, and that his hands and face hurt. He did not complain of head, neck, or back pain, and did not have any head contusions. § 87(2)(b) presumptive diagnosis was a soft tissue injury to his hands and face. The narrative made no mention of § 87(2)(b) alleged loss of consciousness. (Encl. 8A-8G)

§ 87(2)(b)

An ambulance brought § 87(2)(b) to § 87(2)(b) at § 87(2)(b) on § 87(2)(b). § 87(2)(b) who had alcohol on his breath, complained of wrist, shoulder, and rib pain resulting from injuries sustained during his arrest. § 87(2)(b) was alert and oriented and displayed no evidence of head or facial trauma. The medical records made no mention of § 87(2)(b) alleged loss of consciousness. (Encl. 8A-8G)

### Medical Treatment of Prisoner Form

The medical treatment of prisoner form that PO Steven Hong filled out for § 87(2)(b) on May 4, 2005 states that § 87(2)(b) complained of wrist pain. (Encl. 9A)

§ 87(2)(b) was interviewed at the CCRB on May 25, 2005. (Encl. 10A-10E) § 87(2)(b) is a § 87(2)(b) old Hispanic male, who at the time of this interview had been employed as § 87(2)(b). § 87(2)(g)

On May 4, 2005 at approximately 10:50 PM, § 87(2)(b) was in front of Tres Aztecas, a restaurant at the corner of Rivington and Allen Streets in Manhattan, after having delivered packages to East 51<sup>st</sup> Street and 2<sup>nd</sup> Avenue. § 87(2)(b) friend, § 87(2)(b) had driven him to the location to pick up his bicycle, which he had locked to a traffic sign on the sidewalk some time earlier. § 87(2)(b) had consumed two shots of tequila before arriving at the location, but was not intoxicated. He was, however, “not used to drinking.”

Upon arriving at the location, § 87(2)(b) got out of § 87(2)(b) vehicle, a gray van, and proceeded to urinate between two vehicles parked on the street. As soon as he had finished urinating, § 87(2)(b) went over to his bicycle and started to unlock it from the traffic sign to which he had locked it earlier that day. The lock was attached to a chain that was looped around the signpost. When he had unlocked the lock and

removed the chain from around the post with his right hand, § 87(2)(b) felt someone grab him between his shoulder blades and try to spin him around. At this point § 87(2)(b) raised his right hand, which held the chain and lock, thinking to defend himself from this individual, who he assumed was trying to rob him. As he spun around with the chain, an individual, whom he now identified from his uniform as a police officer, grabbed the chain from his right hand as another officer punched him once in his left temple. § 87(2)(b) then fell to the ground and lost consciousness. When § 87(2)(b) regained consciousness he was inside a holding cell at the 7<sup>th</sup> Precinct Stationhouse.

§ 87(2)(b) was arrested for assaulting a police officer and criminal possession of a weapon. He sustained bruises on his face, back, kneecaps, wrists, and shoulders, for which he was treated at § 87(2)(b) prior to his being taken to the 7<sup>th</sup> Precinct. § 87(2)(b) did not complain of pain to his kneecaps or back when describing his injuries at the 7<sup>th</sup> Precinct, to EMS personnel, or at § 87(2)(b). Though § 87(2)(b) stated that the bruises on his wrists were from being handcuffed, he did not remember specifically how he received the others.

### **Results of Investigation**

#### **Efforts to Locate Additional Witnesses**

The undersigned spoke to § 87(2)(b) several times in an attempt to obtain contact information for § 87(2)(b). Beyond stating that § 87(2)(b) lived in Manhattan, § 87(2)(b) continually refused to provide an address or phone number for his friend. Searches of the Metrosearch database and Verizon Superpages.com did not provide any contact information for § 87(2)(b).

The investigator also made several calls to the manager of Tres Aztecas Restaurant in Manhattan in an attempt to interview employees that § 87(2)(b) identified as possible witnesses to his arrest. The manager of Tres Aztecas, who declined to give his name, stated that he did not witness the incident. He also stated that he did not think that § 87(2)(b) who would have been working as the night waitress on the date of incident, witnessed the event. When asked to provide contact information for § 87(2)(b) the manager stated that he did not have any and that § 87(2)(b) no longer worked at Tres Aztecas. Investigator Edwin Pena placed additional calls to Tres Aztecas in Spanish, leaving messages with various employees, but the calls were never returned.

#### **PO Steven Hong**

##### **Complaint Narrative for Complaint Report Number § 87(2)(b)**

In the complaint report narrative for complaint number § 87(2)(b) PO Hong stated that he observed § 87(2)(b) urinating on the northwest corner of Allen and Rivington Streets in Manhattan. PO Hong also stated that while he was trying to issue § 87(2)(b) a summons, § 87(2)(b) took out a metal bicycle chain with a lock and swung it at him. PO Cui intervened, and a struggle ensued as he attempted to control § 87(2)(b). During the course of the struggle, PO Cui injured his hand and strained his back. While at the 7<sup>th</sup> Precinct stationhouse, § 87(2)(b) intentionally banged his head on a picture frame and sustained a laceration to his head. He was taken to § 87(2)(b) (Encl. 15A-15B)

##### **Arrest Report Narrative for Arrest Number § 87(2)(b)**

PO Hong's statements in the arrest report narrative were consistent with those provided in the complaint report, except that he does not include information concerning § 87(2)(b) conduct at the 7<sup>th</sup> Precinct stationhouse. In the arrest report PO Hong also explicitly mentions that § 87(2)(b) resisted a lawful arrest. (Encl. 16A-16B)

##### **Criminal Court Complaint for Arrest Number § 87(2)(b)**

In the criminal court complaint entered for § 87(2)(b) PO Hong stated that he observed § 87(2)(b) pull out a bicycle chain and swing it at his head. He also states that, while attempting to assist PO Hong, PO Cui grabbed § 87(2)(b) after which both PO Cui and § 87(2)(b) fell to the ground. PO Cui sustained a bleeding laceration to his thumb as well as swelling, redness, and substantial pain to his wrist, ankle, and back. (Encl. 17A)

*PO Steven Hong of the 7<sup>th</sup> Precinct was interviewed on June 22, 2005. (Encl. 19A-19B) On May 4, 2005 PO Hong was working a 3:00 PM by 11:35 PM tour with PO Benjamin Cui. They were both in uniform, assigned to marked van number 5429, and performing quality of life patrol within the confines of the 7<sup>th</sup> Precinct. At the conclusion of his interview, PO Cui provided his memobook entries regarding this incident, which state that he stopped an individual at the corner of Rivington and Allen Streets in Manhattan at 9:00 PM on May 4, 2005. The entries also state that one individual was placed under arrest at 9:14 PM, that the arrest was assigned to PO Hong, and that he went line of duty to § 87(2)(b) at 9:50 PM. (Encl. 18A-18B)*

On May 4, 2005 at approximately 9:00 PM, POs Hong and Cui were in their vehicle, headed toward the intersection of Rivington and Allen Streets in Manhattan. As the officers approached the intersection, PO Hong observed a vehicle, which was headed westbound on Rivington Street, drive through the intersection to turn onto Allen Street, which is one-way in the southbound direction. The vehicle then reversed back through the intersection and came to a stop at the red light. Upon witnessing this, PO Hong, who was the patrol van's operator, pulled the vehicle over. He then exited the patrol vehicle and approached the van's driver's side while PO Cui went to talk to the passenger. Upon reaching the driver's side window, PO Hong asked the driver, later identified as § 87(2)(b) for his license, registration, and insurance card. At this point PO Hong noticed the passenger, later identified as § 87(2)(b) exiting the vehicle's passenger's side. PO Cui instructed § 87(2)(b) to stay inside the vehicle. § 87(2)(b) ignoring PO Cui's instruction, stepped out of the van, unzipped his pants, and began to urinate on the sidewalk.

At this point PO Hong returned to the patrol van to enter § 87(2)(b) information into the vehicle's computer system. While in the patrol vehicle, PO Hong observed § 87(2)(b) waving his arms and cursing loudly at PO Cui. PO Hong exited the patrol vehicle and approached § 87(2)(b) and PO Cui. Upon reaching § 87(2)(b) PO Hong noticed that he smelled like alcohol. When he shined his flashlight in § 87(2)(b) face, PO Hong noticed that his eyes were bloodshot, and that he was staggering in an uncontrolled manner, suggesting to him that § 87(2)(b) was intoxicated. As PO Hong continued to shine his flashlight on him, § 87(2)(b) stated, "I'm going to shove that flashlight up your fucking ass." When the officers asked § 87(2)(b) for identification, he provided a credit card that had his name and picture on it. He also provided his address and date of birth upon the officers' request. When the officers returned to their patrol vehicle and ran § 87(2)(b) name in the computer, they noted that § 87(2)(b) had a valid New York State Client ID on file, and that the address on it matched the address that § 87(2)(b) had provided them. They also noted that § 87(2)(b) did not have any outstanding warrants for his arrest.

After noting this information, the officers exited the patrol vehicle to issue § 87(2)(b) a summons for public urination. As PO Cui approached him, § 87(2)(b) moved to the rear door of the van in which he had been a passenger, opened it, removed a bicycle, and placed it on the sidewalk. At this point both officers instructed § 87(2)(b) to leave his belongings inside the vehicle. When § 87(2)(b) the vehicle passenger, stepped out of the vehicle to see what was going on, PO Hong instructed him to step back. § 87(2)(b) complied with PO Hong's instruction, and began to advise § 87(2)(b) to cooperate with the officers. § 87(2)(b) who had ignored the officers' instruction to stop removing items from the van, returned to the rear door of the vehicle and removed a chain with two locks attached to it. As § 87(2)(b) removed the chain, he grabbed it with both hands and stepped toward PO Hong, giving the impression that he meant to strike him. PO Hong took a step backward and instructed § 87(2)(b) to drop the chain, repeating the instruction several times when § 87(2)(b) did not comply. Ignoring these instructions, § 87(2)(b) swung the chain toward PO Hong's head. PO Hong caught the chain in one hand and used the chain to pull § 87(2)(b) toward him. As PO Hong and § 87(2)(b) fought for the chain, PO Cui tackled § 87(2)(b) causing them both to fall to the ground. As PO Cui attempted to handcuff him, § 87(2)(b) struggled to escape his grasp, twisting his body and refusing to put his hands behind his back. Seeing this, PO Hong grabbed one of § 87(2)(b) arms and placed it in an "arm bar," angling § 87(2)(b) arm behind his back so as to immobilize it with his own. After PO Cui got control of § 87(2)(b) other arm, using a similar immobilization technique, PO Hong radioed for assistance. As additional units began to arrive, POs Hong and Cui managed to handcuff § 87(2)(b). Two of the officers who responded to the scene transported § 87(2)(b) to the 7<sup>th</sup> Precinct stationhouse while POs Hong and Cui rode in a separate vehicle. For the initial moving violation that he had committed, § 87(2)(b) was "warned and admonished" in lieu of receiving a summons. When he asked to leave the scene, he was permitted to do so.

The two officers who transported § 87(2)(b) to the 7<sup>th</sup> Precinct handed him over to PO Cui outside of the stationhouse. § 87(2)(b) was cursing PO Cui loudly as he and the other officers brought him inside, making repeated mention of the fact that PO Cui had, “beat him up.” While in front of the front desk at the 7<sup>th</sup> Precinct, § 87(2)(b) intentionally butted the back of his head against a framed picture that was hanging on the wall, sustaining a small cut on his head as a result. PO Hong placed § 87(2)(b) in a holding cell, hoping that a period of confinement would allow him to calm down. After it appeared that § 87(2)(b) had calmed down somewhat, PO Hong removed his handcuffs. As soon as he had done so, § 87(2)(b) drew back his right fist and punched the floor of the holding cell. At this point PO Hong called for an ambulance to come to the stationhouse so that § 87(2)(b) and PO Cui, who had been injured during the encounter at the incident location, could receive medical treatment. An ambulance responded and took § 87(2)(b) and PO Cui to § 87(2)(b).

#### PO Benjamin Cui

##### AIDED Report Filed for PO Cui

On an AIDED report that he filed on May 5, 2005, PO Cui stated that while he was placing § 87(2)(b) under arrest, § 87(2)(b) resisted, causing injuries to PO Cui’s back, wrist, right ankle, and thumb. (Encl. 12A-12E)

*PO Benjamin Cui of the 7<sup>th</sup> Precinct was interviewed on June 21, 2005. (Encl. 14A-14B) On May 4, 2005, PO Cui was working a 5:30 PM by 2:05 AM tour with PO Steven Hong. They were both in uniform, assigned to a marked van, and performing quality of life patrol within the confines of the 7<sup>th</sup> Precinct. Though his statements were largely consistent with PO Hong’s, PO Cui did not note any physical indications that § 87(2)(b) was intoxicated at the scene. At the conclusion of his interview, PO Cui provided his memobook entries regarding this incident, which state that he stopped an individual at the corner of Rivington and Allen Streets in Manhattan at 9:00 PM on May 4, 2005. The entries also state that one individual was placed under arrest at 9:14 PM, that the arrest was assigned to PO Hong, and that he went line of duty to § 87(2)(b) at 9:50 PM. (Encl. 13A-13B)*

#### Criminal Case Status

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### Police Department Documents

##### 7<sup>th</sup> Precinct Command Log for May 4, 2005

The 7<sup>th</sup> Precinct command log entry for 9:45 PM on May 4, 2005 states that § 87(2)(b) was brought in by PO Steven Hong, who had arrested him for § 87(2)(b). It also states that § 87(2)(b) was intoxicated and that he was brought to § 87(2)(b) at 11:10 PM. (Encl. 20A)

##### CCRB History for § 87(2)(b)

§ 87(2)(b) does not have any prior complaints on file. (Encl. 5A)

##### CCRB History for PO Benjamin Cui

This is PO Cui’s third complaint after being with the NYPD for two years. He does not have any substantiations on his record. (Encl. 4A)

##### CCRB History for PO Steven Hong

This is PO Hong’s third complaint after being with the NYPD for two years. He does not have any substantiations on his record. (Encl. 3A)

##### Criminal Conviction History for § 87(2)(b)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civil Suit

On October 12, 2005, the undersigned called Robert Howe of the office of the New York City Comptroller, who stated that § 87(2)(b) had not filed a notice of claim against the City of New York.

### Conclusions and Recommendations

#### Officer Identification

POs Cui and Hong both identified themselves as having been parties to this encounter. PO Hong, § 87(2)(b) arresting officer, identified himself as having pulled the chain away from § 87(2)(b) and as having assisted in his arrest. PO Cui identified himself as having tackled and struggled with § 87(2)(b) while attempting to handcuff him.

#### Credibility Assessment

§ 87(2)(b)  
§ 87(2)(g)  
§ 87(2)(b) POs Cui and Hong had already approached § 87(2)(b) vehicle when § 87(2)(b) got out and began to urinate. § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

§ 87(2)(b) admitted to having two one-ounce shots of tequila prior to this incident, but denied having been drunk. § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

#### PO Steven Hong and PO Benjamin Cui

§ 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)

#### Allegation A: PO Steven Hong used physical force against § 87(2)(b)

#### Allegation B: PO Benjamin Cui used physical force against § 87(2)(b)

§ 87(2)(b) stated that an individual whom he later discovered to be a police officer grabbed him from behind as he was urinating in the street. He further stated that as he raised his hand to “defend himself,” PO Hong, grabbed the bicycle chain that he was holding out of his hand as PO Cui punched him in his right temple. § 87(2)(b) then fell to the ground and lost consciousness. POs Cui and Hong both stated that PO Cui tackled § 87(2)(b) to the ground after § 87(2)(b) swung a bicycle lock and chain at PO Hong’s head, and that both officers wrestled with § 87(2)(b) when he resisted their attempts to handcuff him. They both denied striking § 87(2)(b)

New York State Penal Law 35.30 states, “A police officer may use physical force when and to the extent he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force.”(Encl. 2A) Though § 87(2)(b) denied assaulting PO Hong with the bicycle chain, he admitted to raising his hand, which contained the bicycle chain, to

“defend himself” against the officer; § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Patrol Guide Procedure 203-11 authorizes an officer to use, “only that amount of force necessary to overcome resistance,” when making an arrest. (Encl. 1A) § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: